

## **II. Remarks**

Claims 1-93 are pending. Claims 17 and 60 have been made subject to objections stated on pages 3-4 of the Office Action. In response to the Examiner's objections, claims 17 and 60 have been amended with the Examiner's suggested language.

Claims 1-93 are rejected under 35 U.S.C. § 102(e) as anticipated Auerbach U.S. Patent 6,549,937. A rejection under 35 U.S.C. § 102(e) requires that the Applicant's date of invention be after the filing date of the reference patent, which can only be determined by an Interference, since Applicant and Patentee Auerbach are claiming the same invention or substantially the same invention. In view of the present Amendment, this Application is in condition for allowance, except for the question of priority between Applicant and Patentee Auerbach.

Accordingly, and pursuant to 37 C.F.R. § 1.607, Applicant respectfully requests that an Interference be declared between the above-identified patent application and Auerbach U.S. Patent 6,549,937.

37 C.F.R. § 1.607 is the relevant regulation, because Applicant copied the claims of Auerbach U.S. Patent 6,549,937 prior to the adoption of 37 C.F.R. Part 41.

### **(1) Identity of the Patent**

The identity of the patent is U.S. Patent No. 6,549,937, filed July 21, 1999, and issued April 15, 2003, naming as inventors David B. Auerbach and Benjamin A. Mejia, and assigned to Microsoft Corporation, Inc.

### **(2) The Proposed Count**

The proposed count is as follows:

**COUNT 1.**

Any independent claim of the Auerbach Patent 6,549,937, i.e., any one of claims 1, 17, or 32, or any independent claim of the Donovan Patent Application 10/824,038, i.e., any one of claims 1, 17, 32, 44, 58, 59, 60, 76, 79, 84, or 93.

**(3) Identifying at Least One Claim in the Patent**

All independent claims, i.e., claims 1, 17, and 32, of the Auerbach Patent 6,549,937 correspond to Count 1. The remaining claims depend from one of the independent claims of the Auerbach Patent 6,549,937.

**(4) Present a Claim**

All independent claims, i.e., claims 1, 17, 32, 44, 58, 59, 60, 76, 79, 84, and 93 of the Donovan Patent Application 10/824,038 correspond to Count 1. The remaining claims depend from one of the independent claims of the Donovan Patent Application 10/824,038.

**(5) Application of Terms of Application Claims**

There are no Application claims identified as corresponding to the Count that are not previously in the Application.

**(6) Requirements of 35 U.S.C. 135(b)**

The requirements of 35 U.S.C. Sec. 135(b) are met because:

(a) the claims with interfering subject matter were presented in Applicant's Patent Application Ser. No. 09/785,254, filed August 30, 1999, included the interfering claims

filed on April 14, 2004, made prior to one year from the date, April 15, 2003, on which the patent was granted;

(b) the identification of the Auerbach patent and a Statement Showing Applicant is Entitled to Judgment under 37 C.F.R. §1.608 were also presented in Applicant's Patent Application Ser. No. 09/785,254 and were filed on July 28, 2004; and

(c) (a) and (b) are applicable to this Request for Interference.

Accordingly, requirements for an Interference have been satisfied, and Applicant respectfully requests that the interference be declared. If the Examiner believes that prosecution of the application could be expedited by a telephone interview, the Examiner is requested to call Peter K. Trzyna at (312) 240-0824.

The Commissioner is hereby authorized to charge any fees associated with the above-identified patent application, including the interference, or credit any overcharges to Deposit Account No. 50-0235. Please direct all correspondence to the undersigned at the address given below.

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Respectfully submitted,



Date: March 14, 2011

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